IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.377 OF 2006
IN
NOTICE OF MOTION NO.1962 OF 2006
IN
L.C.SUIT (STAMP) NO.2174 OF 2006
WITH
CIVIL APPLICATION NO.469 OF 2006

Shri Harishankar Bhageluram Saroj ...Appellant
Versus
The Municipal Corpn. of Gr.Mumbai
& Anr. ...Respondents

WITH

APPEAL FROM ORDER NO.378 OF 2006
IN
NOTICE OF MOTION NO.1953 OF 2006
IN
L.C.SUIT (STAMP) NO.2175 OF 2006
WITH
CIVIL APPLICATION NO.470 OF 2006

Smt.Parvatidevi Dayashankar Saroj ...Appellant
Versus
The Municipal Corpn. of Gr.Mumbai
& Anr. ...Respondents

.....

Mr.A.K.Singh for Appellants.

Mrs.Geeta Joglekar for Respondents.

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CORAM: A.M.KHANWILKAR, J.

JUNE 19, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant documents and pleadings on record.

2. Admit. Mrs.Joglekar waives notice for Respondents.

3. As short question is involved, Appeals are taken up for final disposal forthwith, by consent.

4. These Appeals from Order take exception to the Judgment and Order passed by the City Civil Court at Bombay dated May 12, 2006 in Suit No.2174/2006 and Suit No.2175/2006, refusing to grant ad-interim relief during the pendency of Notice of Motion as prayed by the Appellants. The only reason that can be discerned from the impugned order for refusing to grant ad-interim relief is that sketch produced on record does not show the correct position of the suit premises. Besides, two photographs were taken on record in each of the Suit. This is the only reason stated for refusing

to grant ad-interim relief.

5. The grievance of the Appellants/Plaintiffs on the other hand is that the Appellants had relied on several circumstances including documentary evidence, to wit, the Appellants produced zopadpatti ganna receipt, stand pipe water connection, ration card of the Plaintiff, copy of the electoral voting list, copy of the notice issued to the Corporation dated 5th July 2001, etc. Besides, in Para 7 of the Plaint, the Plaintiff has adverted to the fact that even on earlier occasion, Plaintiff was required to file Suit being L.C. Suit No.3770 of 2001 and injunction was granted in his favour which suit was however withdrawn later on in view of the subsequent development. Copy of the said injunction order has not been annexed to the Plaint but the Plaintiff intends to rely thereon. Inspite of all these documents on record, it is contended by the Appellants, the Trial Court refused to grant ad-interim relief which was for the limited purpose to protect the Appellants/Plaintiffs and not to be evicted until due process of law was to be followed.

6. Counsel for the Respondent Corporation relying on the written instructions received from the Office would contend that due process of law was followed on the earlier occasion, for which reason, it was unnecessary to entertain the present Suit. However, that is not the reason which has weighed with the Trial Court. In my opinion, prima facie, as the Plaintiff was relying on documentary evidence in support of his claim including the previous Judgment in favour of the Appellants/Plaintiffs, it was surely a case for grant of ad-interim relief. However, I am not expressing any final opinion on this aspect. This order may not be considered as expression of opinion either way on the relevant issues.

7. The appropriate course, to my mind, is to set-aside the impugned order and relegate the parties before the Trial Court for deciding the main Notice of Motion expeditiously. In any case, to reconsider the issue for ad-interim order with reference to all the materials on record and also to indicate clear finding and opinion on the basis

of which relief for ad-interim injunction is to be declined. All questions in that behalf are left open.

8. The parties are directed to maintain status-quo with regard to the suit property for a period of two weeks from today to enable the Appellants/Plaintiffs to approach the Trial Court for grant of ad-interim relief or for that matter for finally disposing of the Notice of Motion if the pleadings are complete, as may be advised.

9. Appeals allowed on the above terms.

10. In view of the above order, accompanying Civil Applications also stand disposed of.

A.M.KHANWILKAR, J.